

DETAILED ACTION

This Office Action is in response to amendment filed March 18, 2010. Claims 22-23, 26, 31-38 are presented for further examination.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 22-23, 26, 38 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention.

3. Claims 22-23, 26 discloses program modules including routines, programs, components, data structures, etc. that perform particular tasks and/or implement particular abstract data types “. Based on the specification, such terms can be interpreted as hardware, software or a combination thereof. The claim is software per se based on the disclosure since such claims lacking “hardware “. Therefore, claims 22-23, 26 are non-statutory.

4. Claim 38 recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process.

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5. The method including steps of converting, transmitting, measuring, comparing, and judging are broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent.

Allowable Subject Matter

6. Claims 31-37 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARBARA N. BURGESS whose telephone number is (571)272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Barbara N Burgess
Examiner
Art Unit 2457

June 4, 2010

/Barbara N Burgess/
Examiner, Art Unit 2457